

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHIU-CHUNG JON, RAMA RAMAGOPAL
and MYRON D. NICHOLSON

Appeal No. 96-0479
Application 08/124,063¹

ON BRIEF

Before KIMLIN, WEIFFENBACH and WARREN, *Administrative Patent Judges*.

WEIFFENBACH, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-10, 12, 14-16 and 18-34. As for the other claims remaining in the application, claims 11, 13 and 17 stand withdrawn from consideration as being drawn to non-elected species and claims 35-75 stand

¹ Application for patent filed September 21, 1993.

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withdrawn as being drawn to non-elected inventions. We reverse.

The Claimed Subject Matter

The claims on appeal are directed to a food casing. Claim 1 is representative of the claimed subject matter and reads as follows:

A food casing having a surface coating comprising a dispersion of bixin in a water-soluble and /or alcohol-soluble film forming agent of a cellulose derivative, a protein, a dextrin, a shellac, a starch, or a starch derivative, or mixture of said film forming agents in an amount effective to color a foodstuff encased thereby during cooking or pasteurization.

References of Record

The following references of record are relied upon by the examiner as evidence of obviousness:

Remer	2,477,768	Aug. 2, 1949
Winkler et al. (Winkler)	3,943,262	Mar. 9, 1976
Hettiarachchy et al. (Hettiarachchy)	4,699,664	Oct. 13, 1987
Tood, Jr. (Tood)	5,079,016	Jan. 7, 1992

The Rejections

Claims 1-10, 12, 14-16, 18-21 and 25-34 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hettiarachchy in view of Winkler and Remer.

Claims 22-24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hettiarachchy in view of Winkler and Remer further in view of Todd.

Opinion

We have carefully considered the respective positions advanced by appellants and the examiner. For the reasons set forth below, we reverse the examiner's rejections.

Claim 1 defines a food casing comprising a casing with a surface coating. The surface coating as set forth in the claim is “a dispersion of bixin in a water-soluble and/or alcohol soluble film-forming agent” comprising, *inter alia*, a cellulose derivative or a protein. Appellants disclose in the specification that it is “essential to the present invention that the bixin be resinated with the film forming agent,” i.e., the bixin must be dispersed in the film forming agent (specification: p. 18). Appellants have defined “dispersion” as meaning that “bixin particles are resinated or coated with the film forming agent” (specification: p. 18).

The examiner rejected claims 1-10, 12, 14-16, 18-21 and 25-34 for obviousness over Hettiarachchy in view of Winkler and Remer. Hettiarachchy discloses a stabilized bixin pigment prepared by cross-linking bixin or norbixin with a hydrocolloid such as a cellulose derivative through a polyvalent cation bridge by either hydrogen or ionic bonding (col. 2, lines 4-15). The examiner made a finding that the bixin pigment disclosed in Hettiarachchy is “entrapped in the matrix of the hydrocolloid” or forms a “dispersion” in the hydrocolloid (paper no. 6, pp. 4-5) and concluded that it would have been obvious to use the stabilized bixin disclosed by Hettiarachchy as a surface coating for food casings. We cannot agree with the examiner.

The hydrocolloid disclosed by Hettiarachchy appears to be a component of a complex molecule. Hettiarachchy does not disclose or suggest using the hydrocolloid as a film forming agent. Furthermore,

while Hettiarachchy discloses that his stabilized bixin can be used as a food coloring in beverages and cheese (col. 4, lines 51-54), the reference fails to disclose or suggest using the stabilized bixin as a coating on an edible food casing.

Remer suggests coloring edible food casings with a dye such as bixin or norbixin² in a carrier such as glycerin, mannitol or sorbitol (col. 1, lines 40-58; col. 2, lines 13-20). However, the reference does not suggest dispersing the dye in a water soluble or alcohol soluble film forming agent. According to Remer, the carrier serves as a solvent for the dye such that the dye is uniformly and completely impregnated in the edible casing material (col. 1, lines 51-55). The carrier is not disclosed as being a film forming agent. Accordingly, we do not find that Remer discloses or suggests coating the edible casings or teaches a composition that comes within the scope of the term “dispersion” as set forth in appellants’ claims.

Winkler discloses combining a dye such as bixin with a carrier such as a protein and an edible casing material to form an extrudable composition and then extruding the composition to form the edible casing (col. 3, lines 18-40). The reference does not teach or suggest forming a surface coating containing bixin on an edible casing.

Taking the prior art relied upon by the examiner as a whole, we find that the examiner has failed to present a *prima facie* case of obviousness over the combined teachings of Hettiarachchy, Remer and Winkler.

²Remer discloses using “annatteo” (sic, annatto) as a dye (col. 4, lines 66-69). Hettiarachchy discloses that both bixin and norbixin are derived from annatto (col. 2, lines 26-27).

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Accordingly, the rejection of claims 1-10, 12, 14-16, 18-21 and 25-34 under 35 U.S.C. § 103 as being unpatentable over Hettiarachchy in view of Winkler and Remer is reversed. We also reverse the rejection of claims 22-24 under 35 U.S.C. § 103 as being unpatentable over Hettiarachchy in view of Winkler and Remer further in view of Tood since Tood does not make up for the deficiencies of Hettiarachchy, Winkler and Remer.

For the foregoing reasons, the examiner's rejection of claims on appeal is reversed.

REVERSED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
CAMERON WEIFFENBACH)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
CHARLES F. WARREN)	
Administrative Patent Judge)	

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CW/kis
VISKASE CORPORATION
6855 West 65th Street
Chicago, IL 60638